Supreme Court, U.S.
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No. 94-1398

In The

Supreme Court of the United States

October Term, 1994

UNITED MINE WORKERS OF AMERICA, AFL-CIO,
an unincorporated association,

Petitioner,

v.

PEABODY COAL COMPANY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Sixth Circuit Court of Appeals erred in borrowing the National Labor Relations Act six-month limitations period for application in this case brought under the Worker Adjustment and Retraining Notification Act, when the Sixth Circuit found that the considerations set forth in *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151 (1983) and its progeny all counseled in favor of borrowing the NLRA limitations period.

RULE 29.1 STATEMENT

Respondent, Peabody Coal Company, is an indirect wholly-owned subsidiary of Peabody Holding Company, Inc. Peabody Holding Company, Inc. is an indirect wholly-owned subsidiary of Hanson PLC.

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STATEMENT OF THE CASE

Respondent would like to supplement Petitioner's statement of the case with one matter relevant to the employment terminations giving rise to this WARN Act case.

As recognized by the court below, the Kentucky Department of Natural Resources, on June 3, 1991, ordered Respondent to stop all blasting at its River Queen Mine. *See* Sixth Circuit Opinion, Petitioner's Appendix 2a. As there was no other way Respondent could mine the remaining coal at the River Queen Mine,

Respondent could not effectively mine any more coal. Accordingly, there was very little work left to be done by the miners at the River Queen Mine.

In circumstances such as those facing Respondent on June 5, 1991, the WARN Act allows the employer to give less than 60 days notice. *See* 29 U.S.C. § 2102(b)(2)(A) (allowing less than sixty days notice when the employment loss is caused by business circumstances that were not reasonably foreseeable as of the time notice would have been required). The notice given to the employees represented by Petitioner on June 5, 1991, was as much notice as was practical for Respondent to give to the employees in the circumstances in which Respondent found itself. In addition, consistent with 29 U.S.C. § 2102(b)(3), the notice given on June 5, 1991, stated that the notice was being given pursuant to the WARN Act and explained to the employees why they were receiving less than 60 days notice.

ARGUMENT

This Court already has granted certiorari on the issue of what limitations period should apply in WARN Act cases in *Thomas v. North Star Steel Co.*, 32 F.3d 53 (3d Cir. 1994), *cert. granted*, 63 U.S.L.W. 3514 (U.S. Jan. 6, 1995) (No. 94-834) and *United Steel Workers of America, AFL-CIO-CLC v. Crown Cork & Seal Co.*, 32 F.3d 53 (3d Cir. 1994), *cert. granted*, 63 U.S.L.W. 3514 (U.S. Jan. 6, 1995) (No. 94-835). Petitioners' briefs have been filed in both cases, and those cases (which have been consolidated) are scheduled to be argued on April 25, 1995. Thus, to the

extent that this Court needs to decide what limitations period should apply in WARN Act cases, this Court will do so in the *North Star Steel* and *Crown Cork & Seal* cases.

Because those cases will be decided this term, granting certiorari in this case would be futile. This case cannot be briefed and argued this term. By the time this case would be argued next term, the *North Star Steel* and *Crown Cork & Seal* cases will be decided. Obviously, no useful purpose would be served by granting certiorari in a case which cannot be argued until next term, when the sole reviewable issue in the case will be resolved by this Court this term.

Respondent firmly believes that the Sixth Circuit was correct when it decided that federal courts should borrow the six-month limitations period contained in the NLRA for application in WARN Act cases. Respondent would welcome the opportunity to explain to this Court why *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151 (1983), and its progeny call for the exact result reached by the Sixth Circuit in this case.

But this Court will hear that explanation in the two cases scheduled for argument on April 25, 1995. As granting certiorari in this case would not assist the Court in its resolution of that issue in any material respect, Respondent asks that the petition for certiorari be denied.

CONCLUSION

As this Court has before it this term two cases in which this Court will decide what limitations period

federal courts should apply in WARN Act cases, no useful purpose would be served by granting certiorari in this case. Accordingly, Respondent respectfully requests this Court to deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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